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EXCEPTION ORIGINAL OPEN MEETING AGENDA ITEM



BEFORE THE ARIZONA CORPORATION COMMISSION

Jeff Hatch-Miller
Chairman
William A. Mundell
Commissioner
Marc Spitzer
Commissioner
Mike Gleason
Commissioner
Kristin Mayes
Commissioner

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AZ CORP COMMISSION
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IN THE MATTER OF THE APPLICATION OF
ARIZONA PUBLIC SERVICE COMPANY FOR
A HEARING TO DETERMINE THE FAIR
VALUE OF THE UTILITY PROPERTY OF THE
COMPANY FOR RATEMAKING PURPOSES,
TO FIX A JUST AND REASONABLE RATE OF
RETURN THEREON, TO APPROVE RATE
SCHEDULES DESIGNED TO DEVELOP SUCH
RETURN, AND FOR APPROVAL OF A
PURCHASED POWER CONTRACT.

Docket No
E-01345A-03-0437

IN THE MATTER OF THE APPLICATION OF
ARIZONA PUBLIC SERVICE COMPANY FOR
APPROVAL OF A POWER SUPPLY
ADJUSTOR SURCHARGE.

Docket No
E-01345A-05-0526

AUIA'S EXCEPTIONS TO THE RECOMMENDED OPINION AND ORDER

The ARIZONA UTILITY INVESTORS ASSOCIATION
(AUIA) hereby submits its exceptions to the Recommended
Opinion and Order (Recommended Order) filed in this
proceeding on January 4, 2006 by Chief Administrative Law
Judge (CALJ) Lyn Farmer.

Discussion

The crux of the recommended order in this case is Judge
Farmer's finding that Arizona Public Service Company's (APS)
application for a surcharge to recover \$80 million of under-
collected fuel and purchased power costs is premature and
should be denied.

1 She does not suggest that these costs cannot or should not be recovered,
2 only that a surcharge is not appropriate until after a scheduled rate adjustment
3 has been made on the first anniversary of the Power Supply Adjustor (PSA) next
4 April 1.

5 She reaches this conclusion through an inimitable interpretation of the
6 Commission's order (Decision No. 67744) in the recent APS rate case, holding
7 that the PSA actually requires two balancing accounts, one to keep track of the
8 company's ongoing fuel and purchased power outlays and the other devoted
9 exclusively to the uncollected costs that are eligible for recovery. In Judge
10 Farmer's view, the second account could trigger a surcharge request, but it
11 cannot exist until the first PSA adjustment is made.

12 AUIA disagrees emphatically with this "sequential" interpretation of the
13 PSA, which was conceived in the rate case Settlement Agreement and approved
14 in Decision No. 67744. We believe that much of the "evidence" she cites from
15 selected exhibits, open meeting records, and rate case hearing transcripts give the
16 appearance of supporting her interpretation for one reason: no one in March 2005
17 anticipated that gas prices would rocket upward as they have and that APS
18 would incur the huge uncollected balances that it has. It was simply logical to
19 discuss and demonstrate the operation of the PSA as if the adjustor would come
20 before a surcharge. Decision No. 67744 doesn't require it to happen that way.

21 The Staff's post-hearing brief gives the CALJ some comfort by postulating
22 that the language of Decision No. 67744 could be interpreted to require one or
23 two balancing accounts. But Staff did not leap to the conclusion that a second
24 balancing account would preclude the \$80 million surcharge.

25 For the record, AUIA objects to the CALJ's reliance on open meeting
26 excerpts to support her recommended order on the same plane with sworn
27 testimony and admitted evidence from the hearing. The open meeting record is
28 made up of unsworn, sometimes offhand comments which may be helpful to the
29 Commission in its decision-making, but they have no place in an evidentiary
30 hearing record.

31 This Commission has indulged increasingly in a disturbing practice of
32 allowing unsworn and unexamined evidence to creep into its deliberations

1 through open meetings. To condone the same practice by its hearing officers
2 significantly compounds the problem.

3 As the Commission and the CALJ are aware, AUIA's representative in this
4 matter is not an attorney, so it may be easy to dismiss our concerns as lacking
5 professional stature. But, if the Commission would survey the attorneys who
6 practice before it (without the possibility of retribution) about this growing
7 predilection, many of them would say they are increasingly concerned about the
8 integrity of the Commission's process.

9 AUIA does not intend in these exceptions, to parse our areas of
10 disagreement with the Recommended Order. That has been accomplished very
11 adequately in the closing briefs of the parties and probably will be again in their
12 exceptions. Besides, it's a fairly simply equation: you either agree with Judge
13 Farmer's interpretation or you don't.

14 Suffice it to say that the CALJ's interpretation of Decision No. 67744 is
15 unique because it is at odds with the view of every party to the surcharge
16 hearing and probably every party to the Settlement Agreement.

17 But the fundamental problem with the Recommended Order is that it
18 benefits no one and harms almost everyone in sight.

19 • The uncertain nature of the Arizona PSA already has cost APS
20 customers untold millions because the country's leading credit rating agency has
21 downgraded the utility's credit rating to one notch above junk status.

22 • If adopted by the Commission, the Recommended Order will provide
23 the rating agencies with reason to take further negative credit action against APS.

24 • The Recommended Order will contribute to consumer rate shock by
25 loading a PSA adjustment and a likely surcharge simultaneously on customers'
26 summer bills, probably followed by another surcharge in September.

27 • The CALJ's interpretation defeats the purpose of Chairman Hatch-
28 Miller's amendment to Decision No. 67744 in requiring APS to come to the
29 Commission before its bank balance reaches \$100 million. By denying the
30 surcharge, the Recommended Order will force APS' bank balance up to \$200
31 million before the adjustor kicks in.

32 • Delaying recovery of legitimate costs simply increases APS' carrying
33 costs and, ultimately, the cost to customers.

1 As a result of ambiguities in Decision No. 67744, the CALJ may be
2 justified in her didactic examination of the order and in reaching a unique
3 conclusion. If so, we are reminded of the admonishment of Mr. Bumble in *Oliver*
4 *Twist*: "If the law supposes that, the law is a ass, a idiot."

5 That is not a criticism of Judge Farmer. It only means that if her
6 interpretation is right, it simply aggravates a bad decision by all of us who
7 signed the Settlement Agreement and who supported the surcharge application.
8 We are idiots because we signed onto a PSA that is dysfunctional and too rigid to
9 work in the real world of energy supply and demand.

10 The PSA, as amended by the Commission and now, as interpreted by the
11 CALJ, is seriously flawed, as the rating agencies have implied.

12 The CALJ asserts that the purpose of the April 1 adjustor is to "collect the
13 previous year's under-recovery of fuel and purchased power costs..."¹ AUIA
14 respectfully disagrees. The purpose of an adjustor mechanism is to come as close
15 as possible to equalizing income and outgo for fuels going forward, based on
16 recent experience. The purpose of a year-long adjustment period is not simply to
17 accumulate cost differentials, but also to even out price spikes and account for
18 seasonal anomalies to arrive at a constant fuel cost.

19 Of course, this adjustor, with its 4-mil limitation, can't even come close to
20 creating equilibrium. Absent a surcharge, when the first anniversary arrives, the
21 adjustor will be \$100 million out of synch with 2005 costs. At the same point in
22 2007, without surcharges, the adjustor will be at least \$600 million out of synch.

23 In her Recommended Order, the CALJ refers repeatedly to the "yearly
24 adjustor"² or the "annual adjustment"³ in describing the PSA process. An
25 annual adjustment was contemplated in the Settlement Agreement, but the
26 adjustor approved by the Commission can occur only once because the 4-mil
27 limitation was imposed for the life of the PSA.

28 In order to avoid further disastrous hits to its credit rating, APS needs the
29 Commission's help in delivering some positive news to the rating agencies.

¹ ROO, Footnote 11, P. 12

² ROO, P. 10 @ 21

³ ROO, P. 11 @ 10

1 Denying the surcharge weakens an already inadequate PSA and sends the worst
2 possible message to the financial community.

3 If the Commission agrees with the CALJ's findings regarding the Plan of
4 Administration, so be it. But the Commission should reject the finding that the
5 application is premature and should approve the surcharge.

6 Respectfully submitted, this 13th day of January, 2006

7 
8

9 Walter W. Meek, President

10 **CERTIFICATE OF SERVICE**

11
12 An original and 15 copies of the foregoing exceptions
13 filed this 13th day of January, 2006, with:

14
15 Docket Control
16 Arizona Corporation Commission
17 1200 W. Washington Street
18 Phoenix, AZ 85007

19
20 Copies of the foregoing exceptions hand delivered
21 this 13th day of January, 2006, to:

22
23 Jeff Hatch-Miller, Chairman
24 Dean Miller, Executive Assistant
25 William A. Mundell, Commissioner
26 Adam Stafford, Executive Assistant
27 Marc Spitzer, Commissioner
28 Philip Dion, Executive Assistant
29 Mike Gleason, Commissioner
30 Kenneth Rozen, Executive Assistant
31 Kristin Mayes, Commissioner
32 Matt Derr, Executive Assistant
33 Christopher Kempley, Esq., Legal Division
34 Lyn Farmer, Esq., Hearing Division
35 Ernest Johnson, Esq., Utilities Division

36
37 A copy of the foregoing exceptions was
38 mailed this 13th day of January, 2006, to:

39
40 Thomas L. Mumaw
41 Pinnacle West Capital Corporation
42 P.O. Box 53999, M.S. 8695
43 Phoenix, AZ 85072-3999

44
45 Parties of Record
46
47